

FILED  
U.S. DISTRICT COURT  
WEST VIRGINIA DISTRICT  
NORTH DIVISION

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CLERK OF COURT

met for the second required settlement conference on January 15, 2013. Plaintiff and Defendant both agree "There was no meaningful progress toward settlement" at this second settlement conference. *See* Docket No. 201, ¶ 2.

2. Plaintiff and Defendant are required to meet for one final settlement conference by February 18, 2013. Based upon the prior settlement conference, Plaintiff does not believe any meaningful progress toward settlement will be made at the next settlement conference without the involvement of a neutral third party.

3. The parties previously discussed and approved two mediators, subject to their schedules, but the parties cannot reach agreement on the mediator's costs. Defendant requires Plaintiff to pay for both parties' costs of the mediation, and Plaintiff does not believe that would be appropriate for his creditors trust or fruitful toward a mutual goal of resolution. At this time, no agreement has been made to mediate.

## **II. RELIEF REQUESTED AND BRIEF IN SUPPORT**

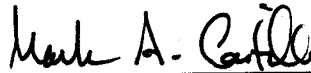
4. "It is within a court's inherent powers to order non-consensual mediation in those cases in which that step seems reasonably likely to serve the interests of justice." *In re Atlantic Pipe Corp.*, 304 F.3d 135, 140 (1st Cir. 2002). Given the complexity of this case, the interests of justice are much more likely to be served in a formal mediation, with costs shared equally by both parties. In the absence of an objective third party to formally mediate the case, there does not seem to be a reasonable prospect for any settlement. The next settlement conference is likely to be futile without the involvement of an experienced mediator.

WHEREFORE, Plaintiff respectfully requests that the Court enter an order compelling mediation prior to trial, with the mediator's costs shared equally between the parties, or,

alternatively, relieving the parties from a third settlement conference, and otherwise granting Plaintiff such other relief appropriate under the circumstances.

DATE: February 5, 2013

Respectfully submitted,

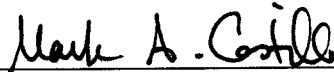


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S. HEROUX, TRUSTEE OF THE CREDITOR  
TRUST OF REOSTAR ENERGY CORP.**

**CERTIFICATE CONFERENCE**

The undersigned certifies that, prior to filing this motion, I conferred with John Galarynk, counsel for Defendant, regarding the relief requested herein. Discussions over formal mediation started at least as early as mid-December 2012, in person, and were followed upon with requests to confirm a mediation via emails and in-person discussions, including on December 26, 2012, January 15, 2013 (with both parties present immediately after the second settlement conference), January 29, 2013, and at other times. Defendant does not agree to cancel the next settlement conference and does not agree to participate in mediation unless Plaintiff pays for both sides' costs of the mediator; Plaintiff does not agree to pay for both sides' costs of the mediator, but believes a shared-cost mediation could be fruitful toward possible settlement.



Mark A. Castillo

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing document was served upon those persons listed below by email/or hand delivery on February 5, 2013:

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